

**UTAH DEPARTMENT OF WORKFORCE SERVICES
EMPLOYMENT ADVISORY COUNCIL
MINUTES**

DATE AND TIME: Wednesday, December 20, 2006
2:00 PM

PLACE: Department of Workforce Services
140 E 300 S
Room 211B
Salt Lake City, UT

MEMBERS

PRESENT: Tani Pack Downing, Chair
Chyleen A. Arbon
Thomas Bingham
John Chindlund
Greg Diven
Eddie P. Mayne
Tony Montano
Jim Olsen
Dan Peay
Richard Thorn
John Williams

OTHERS: Bill Starks, DWS
Chris Love, DWS
Brian Cowley, DWS
John Smith, DWS
Kathy Prettyman, DWS
Jerry Fruin, DWS
Mike Richardson, DWS

WELCOME

Tani Downing welcomed the Council members.

APPROVAL OF AUGUST 24, 2006 MINUTES

On motion by Thomas Bingham, second by John Chindlund, the August 24, 2006, minutes were approved.

OPEN & PUBLIC MEETING LAW NEW REQUIREMENTS & ADVISORY COUNCIL WEBSITE

Tani Downing said that legislation now requires that a recording be kept of all open minutes and also encourages posting meeting notices on the Internet. Bill Starks said that

the Employment Advisory Council now has a webpage, and the meeting agenda, minutes, and materials are posted. The new webpage at www.jobs.utah.gov was shown to the council members.

DWS ANNUAL REPORT

Tani Downing discussed the annual report and highlighted unemployment insurance (UI) division accomplishments. The Comprehensive Unemployment Benefits System (CUBS) benefit system launched in January is processing more claims electronically. It incorporates complete electronic workflows; documents are scanned and seamlessly routed to the appropriate units, eliminating the need for employees to access paper folders and other databases. UI continues working hard on enhanced UI fraud detection and prevention programs. There was a jump in employers registering for UI in FY 2006. Under UI program integrity, the division is working to ensure that benefit payments are timely and accurate and taxes are paid accordingly.

PINNACLE AWARD

Bill Starks said the U.S. Department of Labor (DOL) presented its first annual Pinnacle Award to Utah's Unemployment Insurance Division. It recognizes Utah as the best overall unemployment insurance program in the nation. It measures program performance in all aspects of UI, including benefits, taxes, and appeals. Chris Love accepted the award at the national unemployment insurance directors' meeting in Denver in November.

STATUS OF UI BILLS FOR 2007 LEGISLATIVE GENERAL SESSION

Tani Downing reviewed the unemployment insurance legislation.

HB 23: Employment Security Act Amendments

The bill requires UI tax reports to be filed on electronic media for payroll service providers who file reports on behalf of 100 or more employers in any quarter. The department has identified 10 payroll service providers that this requirement will impact, all were notified of the proposed legislation and none raised any serious concerns. This is a committee bill and the sponsor is Rep. Mascaro.

SB 11: Unemployment Compensation Social Security Offset

The bill removes the reference that the benefit costs associated with the offset will be charged to Reed Act Funds to be in compliance with federal law. The Council has previously reviewed the September 13, 2006, memo from Bill Starks on the issue. This is a committee bill and the sponsor is Sen. Hickman.

Bill: Ineligibility for Unemployment Compensation Benefits

This change came up after Interim Committee finished its work and the department wanted the Council to see the bill before it went to the Legislature. Senator Eastman has agreed to sponsor the bill. Chris Love said the need for the amendment resulted from a law change made in Senate Bill (SB) #5 of the 2004 legislative session. At the time, it was felt that certain aspects of the UI fraud overpayment provisions were overly harsh in certain situations and SB #5 was intended to correct this. However, a claimant recently

filed an appeal questioning the future disqualification period associated with SB #5. After review by legal counsel the department agrees the language in the statute is vague and subject to misinterpretation, thus has proposed legislation to clarify the disqualification period associated with this fraud provision.

Chris Love gave an example of the penalty before the 2004 law change. A claimant can receive 30 percent of his benefit amount in earnings without reducing his UI benefit amount. Prior to the 2004 law change, a claimant entitled to receive \$100 per week in UI benefits who fraudulently failed to report \$50 in work or earnings for that week would have an overpayment established for the amount of benefits he actually received, in this case \$100, plus a civil penalty equal to the benefits he received by direct reason of the fraud, in this case \$20—the difference between the \$100 actually received and the \$80 he was eligible for. In this scenario the claimant is assessed a total combined overpayment and penalty in the amount of \$120 for failing to report earnings that would have resulted in a \$20 benefit reduction—the difference between the \$50 earned and the \$30 disregarded as a result of the 30 percent provision.

The 2004 legislation made the overpayment amount less severe. If the fraud determination is based solely on unreported or underreported work or earnings and the claimant would have been eligible for benefits if the work or earnings had been correctly reported, the individual does not lose eligibility for that week. Both the fraud overpayment and the civil penalty would be the amount of benefits the claimant received by direct reason of fraud. In the current example, the claimant would have been eligible for a reduced benefit amount of \$80 for that week had he reported the \$50 in earnings. With the 2004 law change, we would now assess a \$20 overpayment and add the same amount as a civil penalty; so rather than a \$120 total overpayment, it would be a \$40 total overpayment and penalty amount.

The recent appeals case brought to our attention that the statute should have been clearer. It was never the department's intent to remove the future time disqualification in association with the fraud determination, which is currently 13 weeks to a maximum of 49 weeks. In the current scenario the expectation is that the claimant would still be disqualified from receiving future UI benefits for 13 weeks from the date of the fraud determination even if the total overpayment is repaid to the department. The department modified lines 134 to 139 to correct the perception that invoking the time disqualification was precluded. Tani Downing noted this bill is simply a clarification of the intent of the 2004 legislation but doesn't change the department's current practice of disqualifying up to a maximum of 49 weeks.

Ed Mayne said the position of this Council has been consistent to have no tolerance for employers or employees who willfully commit fraud against the system. The system is to help people in that period of time they are unemployed, employers pay contributions, and there is no room for fraud on either side. Jim Olsen said the Council agreed with lowering the penalty in 2004, as it seemed severe. Tani Downing said fraud is defined as willfully making a false statement or failing to report a material fact to obtain benefits. John Williams asked if this would impact clients retroactively. Tani Downing said by

immediately taking action in changing the legislation minimizes our risk. Bill Starks said we are not attaching a fiscal note because we have administered the law the way we thought the 2004 legislation was intended. The claimant noted above is the only case where we have modified the disqualification period.

Motion: The motion was made by Thomas Bingham, seconded by Greg Diven to go forward with the amendments to 35A-4-405 Ineligibility for Unemployment Compensation Benefits. The motion was approved unanimously.

UPDATE ON UI TRUST FUND

Bill Starks reported on the status of the Trust Fund. It reflects one of the largest annual net increases in the Trust Fund in recent memory.

The *Utah 2007 UI Tax Rate Distribution for Experience Rated Employers* page gives a matrix of the experience-rated employers. Over 38,000 employers (68%) will have the minimum rate of 3/10 of 1% (.003) for 2007, a drop from 4/10 of 1% (.004) from last year. It is significant that 68% of experienced rated employers have the minimum tax rate. The rate notices were sent out on November 29, 2006.

The *UI Tax Rate Calculations and Explanations* page is for informational purposes.

The *UI Trust Fund Reserve Factor and Social Cost Calculation* page shows that the Trust Fund did not reach the 'minimum adequate' level on June 30, 2006, thus the reserve factor went to 1.05, which represents a significant decrease from the 1.25 reserve factor in 2006. For the 32% of experienced rated employers that have benefit charges this will help them tremendously; the reserve factor doesn't impact those employers with the minimum rate.

The *UI Trust Fund Balance Projections* page shows the Trust Fund in the Minimum Adequate Reserve as of September 30, but rates are calculated on the balance as of June 30. Two years ago we projected the Trust Fund would not reach the Minimum Adequate Reserve until 2012 or beyond. The rapid increase in the fund is largely attributable to a sustained 5% Utah job growth rate, a 2.4% unemployment rate, and increased tax rates the last few years. We may want to have discussions next year about where this adequate level should be set so that we do not find ourselves in the unenviable position of having to raise taxes during economic hard times because the fund was not adequate to fund a sustained recession. Our projections for future rates are prepared conservatively.

The *UI Benefits vs. Contributions Paid* page shows benefits and taxes paid. There has been a creep up in unemployment claims the last six weeks, however this may be mostly seasonal in nature.

MISCELLANEOUS

Tani Downing said there is a Council vacancy for a public representative and she hasn't received any recommendations. She asked that members let her know if they have a recommendation of someone who is not a representative of labor or employers.

Ed Mayne added that the Pinnacle Award is well deserved for this agency. He said Tani Downing's leadership and the efforts of Chris Love and Bill Starks' staff are reflective in this award and congratulated them. He said to make sure the Legislature is made aware of this award. Tom Bingham agreed that things are moving in the right direction. Tani Downing said it has been built on a good base for several years and took the effort of a lot of people throughout the department. It is a culmination of good management in the department. She thanked the Council members for the kind words and for its input on how to move the department forward.

The meeting was adjourned at 2:45.